

EXHIBIT 4

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GOOGLE INC.

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16 **UNITED STATES DISTRICT COURT**
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18 **NORTHERN DISTRICT OF CALIFORNIA**
19
20 **SAN FRANCISCO DIVISION**

21 ORACLE AMERICA, INC.

22 Plaintiff,

23 v.

24 GOOGLE INC.

25 Defendant.

Case No. 3:10-cv-03561-WHA

Honorable Judge William Alsup

**DEFENDANT GOOGLE INC.'S
FOURTH SUPPLEMENTAL RESPONSES
TO PLAINTIFF'S INTERROGATORIES,
SET ONE, NO. 3**

conclusion that “the Accused Instrumentalities are specially made or adapted for infringement and are not a staple article suitable for substantial non-infringing use,” without any factual support despite the fact that it is Oracle’s burden to prove that the Accused Instrumentalities are not suitable for substantial non-infringing use pursuant to 35 U.S.C. § 271(c). Oracle has not endeavored any analysis of even readily available public open source applications and continues to simply rely on a purely conclusory statement. As a result, Oracle cannot establish infringement as a matter of law.

- **All Asserted Claims:** Oracle is estopped as a matter of law from relying on the doctrine of equivalents to enlarge the scope of the ‘205 patent claims to cover the Accused Instrumentalities. *See Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki*, 243 F.3d 558 (Fed. Cir. 2000) (en banc). Alternatively, Oracle cannot rely on the doctrine of equivalents to prove infringement because the asserted scope of equivalency of what is literally claimed would encompass the prior art. *Wilson Sporting Goods Co. v. David Geoffrey & Assoc.*, 904 F.2d 677, 683 (Fed. Cir. 1990), *cert. denied*, 498 U.S. 992 (1990). In any event, the functionality identified by Oracle as infringing under the doctrine of equivalents is substantially different from that described and claimed by the ‘205 patent. In addition, Oracle’s identification of an entry in the jitEntry table works in a completely different manner from the claimed “new instruction.”
- **All Asserted Claims:** Google served its Invalidity Contentions on January 18, 2011, detailing its bases for the invalidity of each asserted claim of this patent. Google contends that each asserted claim is invalid and therefore Google cannot infringe such a claim.

The ‘702 Patent

- **Claims 1 and 7, and all dependent claims that depend therefrom:** For these claims, Oracle has failed to identify on a claim by claim basis in Exhibit C the actual performance of any allegedly infringing method and instead relied on a general statement including “Android dx tool involves a method” or “Android dx tool [performs steps].” All of these claims implicate the performance of a method and the charts in Exhibit C are devoid of any example of any method being performed, thereby precluding a finding of infringement. Oracle has

1 not made a showing of infringement because it has not identified any allegedly infringing act
 2 or purported direct infringer for these claims and has yet to provide them in supplemental
 3 disclosures under the Patent Local Rules.

- 4 • **Claims 13, and all dependent claims that depend therefrom:** For these claims, Oracle
 5 failed to identify on a claim by claim basis in Exhibit C any specific device that allegedly
 6 infringes and instead relied on a general statement including “[a]ny device or computer
 7 which can run the Android dx tool.” Oracle has not made a showing of infringement because
 8 it has not identified any specific allegedly infringing device or purported direct infringer for
 9 these claims and has yet to provide them in supplemental disclosures under the Patent Local
 10 Rules.
- 11 • **All Asserted Claims:** As presently understood, Oracle has not made a showing of
 12 infringement at least because the material cited for the “removing said duplicated elements
 13 from said plurality of class files to obtain a plurality of reduced class files” element on pages
 14 13-17 of Exhibit C does not meet the claim element even if it were implemented and used in
 15 a device in the form it is recited in Exhibit C because it would not employ a method of
 16 obtaining a plurality of reduced class files in that there would be no intermediate step of
 17 removing duplicated elements from class files to obtain a plurality of reduced class files prior
 18 to forming a multi-class file. Similarly, Oracle has not made a showing of infringement at
 19 least because the material cited for the “forming a multi-class file comprising said plurality of
 20 reduced class files” element at pages 17-20 of Exhibit C does not meet the claim element
 21 even if it were implemented and used in a device in the form it is recited in Exhibit C
 22 because it would not employ a method of forming a multi-class file in that no multi-class file
 23 would be formed from reduced class files obtained prior to forming the multi-class file. Each
 24 other independent claim in Exhibit C references Oracle’s citation for claim 1 for similar
 25 elements and the same basis applies to those claims.
- 26 • **All Asserted Claims:** As presently understood, Oracle has not made a showing of
 27 infringement at least because the material cited for the “forming a multi-class file comprising
 28 said plurality of reduced class files” element at pages 17-20 of Exhibit C does not meet the

1 claim element even if it were implemented and used in a device in the form it is recited in
 2 Exhibit C because, in view of the Court’s claim construction, the resulting .dex file does not
 3 contain all of “what remains after one or more duplicated elements have been removed from
 4 a class file.” For example, the resulting .dex file does not contain a reduced constant pool for
 5 each class or the Java bytecodes contained in the class files. Each other independent claim
 6 in Exhibit C references Oracle’s citation for claim 1 for similar elements and the same basis
 7 applies to those claims.

8 • **Claims 1, 7, and all dependent claims that depend therefrom:** As presently understood,
 9 Oracle has not made a showing of infringement at least because the material cited for the
 10 “removing said duplicated elements from said plurality of class files to obtain a plurality of
 11 reduced class files” element on pages 13-17 of Exhibit C does not meet the claim element
 12 even if it were implemented and used in a device in the form it is recited in Exhibit C. Even
 13 if Oracle were correct to claim that the cited material results in the “remov[al]” of
 14 “duplicated elements” from some of the class files (and it is not), the cited material does not
 15 treat the first instance of a constant duplicated across a plurality of class files in the same
 16 manner as subsequent instances of the constant found in the plurality of class files, and so
 17 there is no “remov[al]” of duplicated elements from each and every one of the “said plurality
 18 of class files.” Claim 7 in Exhibit C references Oracle’s citation for claim 1 for similar
 19 elements and the same basis applies to that claim.

20 • **All Asserted Claims:** As presently understood, Oracle has not made a showing of
 21 infringement at least because the material cited for “determining plurality of duplicated
 22 elements in a plurality of class files” elements on pages 2–9 of Exhibit C does not meet the
 23 claim element even if it were implemented and used in a device in the form it is recited in
 24 Exhibit C because it would not employ a method of determining a plurality of duplicated
 25 elements in a plurality of class files in that the classes cited do not determine whether a
 26 duplicated element is duplicated within a single class file or across two class files or whether
 27 the duplicated is one of many or the only one. Each other independent claim in Exhibit C
 28 references Oracle’s citation for claim 1 for similar elements and the same basis applies to